

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOSEPH SCOTT,

Plaintiff,

v.

JOHN MANENTI, et al.,

Defendants.

Civil Action
No. 15-7213 (JBS-AMD)

MEMORANDUM OPINION

SIMANDLE, Chief District Judge

1. On September 30, 2015, Plaintiff Joseph Scott submitted a civil complaint alleging Defendants violated his Eighth Amendment right to adequate medical care by, among other things, denying him a MRI of his shoulder after experiencing excruciating pain for nearly two years. Complaint, Docket Entry 1. The Court administratively terminated the complaint on October 14, 2015, for failure to pay the filing fee or submit an application to proceed *in forma pauperis*. Docket Entry 4. Plaintiff paid the filing fee on October 21, 2015, and the Court reopened the case for review.

2. Prior to this Court's review of the complaint pursuant to 28 U.S.C. § 1915A, Plaintiff filed two motions to amend the complaint seeking to add a "deliberate indifference" claim as well as a claim under the Federal Tort Claims Act ("FTCA"), 28

U.S.C. §§ 1346(b), 2671-2680. First Motion to Amend, Docket Entry 11; Second Motion to Amend, Docket Entry 13.

3. The Court permitted the complaint to proceed in part against Drs. Manenti and Morales, and the remainder of the defendants were dismissed. The Court denied Plaintiff's motions to amend without prejudice as the proposed amendments did not state valid claims. Order, Docket Entry 18.

4. On January 25, 2016, Plaintiff filed another motion to amend the complaint to add a FTCA claim against all defendants, including those the Court had dismissed in its January 7, 2016 Opinion and Order. Third Motion to Amend, Docket Entry 27.

5. Plaintiff attached to his motion a notice of claim form indicating the Federal Bureau of Prisons ("BOP") received a claim on October 5, 2015, for \$5000 due to the alleged negligence of FCI Fairton personnel. *Id.* at 7-10.

6. The Court denied that motion as a FTCA claim may not be brought against an individual, only the United States. April 13, 2016 Order, Docket Entry 45.

7. Plaintiff filed this motion to amend on May 6, 2016. Fourth Motion to Amend, Docket Entry 47.

8. Rule 15(a) of the Federal Rules of Civil Procedure permits a party to amend a pleading once as a matter of course twenty-one (21) days after serving the pleading or twenty-one

(21) days "after a responsive pleading or service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. Pro. 15(a)(1)(A)-(B).

9. All defendants have been served; however, no responsive pleadings have been filed.

10. Plaintiff seeks to add a FTCA claim against the United States. Construing the pro se pleadings with a measure of tolerance, Plaintiff has incorporated the facts stated in the original complaint and has submitted his notice of tort claim form. Therefore, the motion shall be granted as Plaintiff has sufficiently pled a FTCA claim against the United States.

11. An appropriate order follows.

June 24, 2016

Date

s/ Jerome B. Simandle

JEROME B. SIMANDLE

Chief U.S. District Judge